

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/05-01/08 OA 10

Date: 01 February 2012

THE APPEALS CHAMBER

Before:

**Judge Anita Ušacka, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Daniel David Ntanda Nsereko**

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

IN THE CASE OF THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO

Confidential

Decision on “Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 9 January 2012 and addendum of 10 January 2012”

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Ms Fatou Bensouda, Deputy Prosecutor
Mr Fabricio Guariglia

Counsel for the Defence

Mr Nkwebe Liriss
Mr Aimé Kilolo Musamba

Legal Representatives of the Victims

Mr Assingambi Zarambaud

REGISTRY

Registrar

Ms Silvana Arbia

A handwritten signature in black ink, appearing to be 'S. Arbia', is located in the bottom right corner of the page.

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III entitled “Decision on the defence’s 28 December 2011 ‘Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo’” of 6 January 2012 (ICC-01/05-01/08-2034-Conf),

Having before it the “Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 9 January 2012 and addendum of 10 January 2012” of 20 January 2012 (ICC-01/05-01/08-2054-Conf-tENG),

After deliberation,

By majority, Judge Song dissenting,

Renders the following

DECISION

The “Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 9 January 2012 and addendum of 10 January 2012” is rejected.

REASONS

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 6 January 2012, Trial Chamber III rendered its “Decision on the defence’s 28 December 2011 ‘Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo’”.¹ The Trial Chamber rejected Mr Bemba’s request for interim release and held that his “detention continues to be necessary to ensure his appearance at trial”.²

2. On 9 January 2012, Mr Bemba filed the “Defence appeal against Trial Chamber III’s decision of 6 January 2012 entitled *Decision on the defence’s 28 December 2011*

¹ ICC-01/05-01/08-2034-Conf.

² ICC-01/05-01/08-2034-Conf, para. 10.



‘Requête de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo’³
(hereinafter: “Notice of Appeal”).

3. On 10 January 2012, Mr Bemba filed an “Addendum to the Defence Notice of appeal against Trial Chamber III’s decision of 6 January 2012 entitled ‘*Decision on the Defence’s 28 December 2011 “Requête de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”*’⁴ (hereinafter: “Addendum to Notice of Appeal”) requesting the Appeals Chamber to reduce the time limit for the Prosecutor and participants to file their respective submissions in order to allow for the Appeals Chamber to make its decision by 19 January 2012, the beginning of a two week period during which the Trial Chamber would not be sitting.

4. On 10 January 2012, Mr Bemba filed the “Defence Appeal Brief against the Trial Chamber III’s decision of 6 January 2012 entitled ‘*Decision on the Defence’s 28 December 2011 “Requête de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo”*’⁵ (hereinafter: “Document in Support of the Appeal”).

5. On 17 January 2012, the Prosecutor filed the “Prosecution’s Response to the ‘Defence Appeal Brief against Trial Chamber III’s decision of 6 January 2012 entitled “Decision on the Defence’s 28 December 2011 *Requête de mise en liberté provisoire de M Jean-Pierre Bemba Gombo*”’⁶ (hereinafter: “Response to the Document in Support of the Appeal”).

6. On 20 January 2012, the victims filed the “Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 9 January 2012 and addendum of 10 January 2012”⁷ (hereinafter: “Victims’ Application”).

7. On 23 January 2012, the Appeals Chamber issued an “Order on the filing of a response by Mr Jean-Pierre Bemba Gombo and the Prosecutor to ‘Demande du Représentant légal de victimes, Maître Zarambaud Assingambi à participer a la

³ ICC-01/05-01/08-2037-tENG (OA 10).

⁴ ICC-01/05-01/08-2039-Conf-Anx1 (OA 10).

⁵ ICC-01/05-01/08-2041-Conf-Anx1 (OA 10), dated 10 January 2012 and registered on 11 January 2012.

⁶ ICC-01/05-01/08-2047-Conf (OA 10).

⁷ ICC-01/05-01/08-2054-Conf-tENG (OA 10).



procédure d'appel suite a l'acte d'appel de la Défense du 9 janvier 2012 et à l'addendum du 10 janvier 2012”⁸ by which the Prosecutor and Mr Bemba were ordered to file responses to the Victims' Application by 25 January 2012.

8. On 25 January 2012, the Prosecutor and Mr Bemba responded to the Victims' Application.⁹ The Prosecutor did not oppose the participation of the victims in the appeal¹⁰ whilst Mr Bemba deferred to the Appeals Chamber's "discretion on this matter".¹¹

II. DETERMINATION BY THE APPEALS CHAMBER

9. Before addressing the merits of the Victims' Application it is necessary to examine whether the Victims' Application is properly before the Appeals Chamber.

10. The Appeals Chamber recalls that it has previously directed that "in future cases and until such time as the matter is regulated in the constituent documents of the Court, applications by victims for participation in appeals must be filed as soon as possible and in any event before the date of filing of the response to the document in support of the appeal".¹² In the present appeal, the Appeals Chamber notes that the Victims' Application was filed three days after the Response to the Document in Support of the Appeal was due and received. Furthermore, the Legal Representative of victims has not provided any reasons for the non-compliance with the Chamber's directions. While the Appeals Chamber will not ordinarily accept requests for participation filed late¹³, it observes that in the circumstances of the present appeal the original timelines for the filing of documents were modified by Mr Bemba's early

⁸ ICC-01/05-01/08-2059 (OA 10).

⁹ "Prosecution's Response to 'Demande du Représentant légal de victimes, Maître Zarambaud Assingambi à participer a la procédure d'appel suite a l'acte d'appel de la Défense du 9 janvier 2012 et à l'addendum du 10 janvier 2012' (ICC-01/05-01/08-2054-Conf)", ICC-01/05-01/08-2064-Conf (OA10), (hereinafter: "Prosecutor's Response"); "Defence response to the 'Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 9 January 2012 and addendum of 10 January 2012'", ICC-01/05-01/08-2065-Conf-tENG (OA 10), (hereinafter: "Defence Response").

¹⁰ Prosecutor's Response, para. 15.

¹¹ Defence Response, para. 1.

¹² See *Prosecutor v. Thomas Lubanga Dyilo*, "Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled 'Decision on Victims' Participation'", 16 May 2008, ICC-01/04-01/06-1335 (OA 9 OA 10), para. 15.

¹³ See *Prosecutor v. Omar Hassan Ahmad Al Bashir*, "Decision on the Second Application by Victims a/0443/09 to a/0450/09 to Participate in the Appeal against the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir'", 28 January 2010, ICC-02/05-01/09-70 (OA), para 11.



filing of his Document in Support of the Appeal. Had this not been the case the Victims' Application would have been filed on time. Be that as it may, the Appeals Chamber must emphasise the need for legal representatives to exercise due diligence regarding applicable timelines (especially when modified) and to file their applications on or before the day the response to the document in support of the appeal is due. However, as the issue arises for the first time, the Appeals Chamber admits the Victim's Application.

11. Turning to the merits of the Victims' Application, the Appeals Chamber has consistently held that in appeals brought under article 82 (1) (b) of the Statute, the following four cumulative criteria for victims' participation enumerated in article 68 (3) of the Statute must be fulfilled: (i) the individuals seeking participation must be victims in the case; (ii) their personal interests must be affected by the issues on appeal; (iii) their participation must be at an appropriate stage of the proceedings; and (iv) the manner of participation should neither cause prejudice to nor be inconsistent with the rights of the accused and a fair and impartial trial.¹⁴

12. In the instant case, the application does not meet the first criterion for two reasons: (i) it does not make clear which victims are applying to participate in the appeal; and (ii) it does not indicate the decisions in which those victims were granted victim status. The Appeals Chamber has on previous occasions, underscored the importance of legal representatives specifying the victims they represent in an appeal and referring to the decisions that granted the victims such status.¹⁵ In particular, the

¹⁴ *Prosecutor v. Thomas Lubanga Dyilo*, "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'D cision sur la demande de mise en libert  provisoire de Thomas Lubanga Dyilo'", 13 February 2007, ICC-01/04-01/06-824 (OA 7), paras 44-45; "Decision, *in limine*, on Victim Participation in the appeals of the Prosecutor and the Defence against Trial Chamber I's Decision entitled 'Decision on Victims' Participation'", 16 May 2008, ICC-01/04-01/06-1335 (OA 9 OA 10), para. 36; *Prosecutor v. Jean-Pierre Bemba Gombo*, "Reasons for the 'Decision on the Participation of Victims in the Appeal against the 'Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa'", 20 October 2009, ICC-01/05-01/08-566 (OA 2), para. 15.

¹⁵ See *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Decision on the Participation of Victims in the Appeal of Mr Katanga Against the 'Decision on the Modalities of Victim Participation at Trial'", 24 May 2010, ICC-01/04-01/07-2124 (OA 11), para. 6; *Prosecutor v. Thomas Lubanga Dyilo*, "Order on the Filing of a Clarification to the 'Demande de participation en appel contre la d cision d'arr t du proc s pour abus de proc dure, dat e du 08 juillet 2010 (ICC-01/04-01/06-2517-Conf) et contre la d cision de mise en libert  de l'accus , dat e du 15 juillet 2010 (ICC-01/04-01/06-T-314)'", 3 August 2010, ICC-01/04-01/06-2547 (OA 17 OA 18); *Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on the Participation of Victims in the Appeal against the 'Decision on Applications for Provisional Release' of Trial Chamber III", 14 July 2011, ICC-01/05-01/08-1597 (OA 7), para. 14;



Legal Representative in question, Mr Zarambaud has recently been reminded in the *Bemba OA 9* appeal that “it is the duty of a legal representative who applies for victims’ participation to refer specifically to the relevant decisions granting victim status to each of the victims he or she represents in his application for participation”.¹⁶

13. In the absence of the information referred to in the above paragraph, the Appeals Chamber is unable to determine which individuals are seeking participation in this appeal and whether they are victims in the case. As the criterion for determining victim participation is cumulative, the Appeals Chamber will not examine the remaining criteria. The Victims’ Application is thus rejected.

Judge Sang-Hyun Song appends a dissenting opinion in relation to this decision.

Done in both English and French, the English version being authoritative.



Judge Anita Ušacka
Presiding Judge

Dated this 01st day of February 2012

At The Hague, The Netherlands

“Decision on ‘Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 21 September 2011’”, 19 October 2011, ICC-01/05-01/08-1848-Conf (OA 9).

¹⁶ *Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on ‘Application of Legal Representative of Victims Mr Zarambaud Assingambi for leave to participate in the appeals proceedings following the Defence appeal of 21 September 2011’”, 19 October 2011, ICC-01/05-01/08-1848-Conf (OA 9), para. 9.

Dissenting Opinion of Judge Sang-Hyun Song

I disagree with the majority that the victims specified in the operative part of the present decision should not be allowed to make submissions on the appeal. As constantly expressed since my first dissenting opinion to the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’” of 13 February 2007, I disagree with the approach of the majority to participation of victims in appeals brought under article 82 (1) (b) of the Statute.¹ In my view, victims who have participated in the proceedings that give rise to an appeal under article 82 (1) (b) of the Statute must be considered participants in the meaning of regulations 64 (4) and (5) of the Regulations of the Court. They therefore have the right to file a response to the document in support of the appeal. There is neither a need for them to apply for participation, nor for the Appeals Chamber to rule on such applications.

Done in both English and French, the English version being authoritative.



Judge Sang-Hyun Song

Dated this 01st day of February 2012

At The Hague, The Netherlands

¹ ICC-01/04-01/06-138, pp. 55 to 57.